IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.296 of 2005

Date of decision 29.6.2007

National Insurance Company Ltd. Petitioner

Vs.

Karnail Singh and others Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Ms.Devyani Sharma, Advocate.

For the respondents: Mr.T.S.Chauhan, Advocate, for respondents No.1 to 4.

Mr.Deepak Kaushal, Advocate, for respondents No.5 and 6.

Rajiv Sharma, J.

A challenge has been laid by the petitioner Company to the Award passed by the Motor Accident Claims Tribunal-1, Sirmaur District at Nahan in MAC Petition No.10-MAC/2 of 2004. The brief facts necessary for the adjudication of this petition are that a claim petition was filed by the respondents No.1 to 4. Respondents No.1 to 3 are the sons and respondent No.4 is the widow of late Shri Amar Singh who met with an accident on 21.11.2003 while travelling in a bus bearing registration No.HP-17-7085. The Motor Accident Claims Tribunal had awarded a sum of Rs.4, 80,000/- to the claimants, vide Award dated 4.1.2005.

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

Mrs.Devyani Sharma, learned counsel appearing for the petitioner, had strenuously argued that the Award dated 4.1.2005 is perverse since the well known principles of determination of compensation have not been taken into consideration by the learned Tribunal below. Mr.T.S.Chauhan, learned counsel appearing for respondents No.1 to 4, had supported the Award.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

In the petition the monthly income of the deceased Amar Singh is stated to be Rs.8,000/-, including Rs.4,900/- from pension plus Rs.3100/- from agriculture. PW-1 Ram Swaroop had stated on oath that his father was retired Security Guard and he was drawing a sum of Rs.4,900/- as pension. The learned Tribunal had assessed the total monthly income of the deceased at Rs.7,000/- and on that basis the deceased annual income was assessed at Rs.84,000/-. The learned Tribunal after deducting 1/3rd amount which deceased Amar Singh might be spending as his personal expenses the net amount of income was calculated at Rs.56,000/- per annum. The age of the deceased as per the claim petition has been mentioned 61 years. In the F.I.R. also the age of the deceased is recorded as 61 years. The learned Tribunal had applied a multiplier of 8 and on that basis the loss of dependency was worked out to Rs.4,80,000/- The learned Tribunal had held the claimants entitled to a sum of Rs.12,000/- on account of loss of consortium, Rs.10,000/- on account of funeral charges and Rs.10,000/- on account of expenses of post death ceremony.

Mrs. Devyani Sharma, Advocate had relied upon the Full Bench judgment rendered in ***National Insurance Co. Ltd. Vs. Soma Devi and others*** ,2003 ACJ 1919 where their Lordships have held as under:

> **"**It, therefore, becomes abundantly clear that in all such like cases where the award on the face of it is a perversity, or is based on fraud, and the insurance company has no remedy under the Motor Vehicles Act of either challenging the award in appeal or being either to have it recalled or reviewed by the Tribunal itself, the power of judicial review by this Court in the exercise of its extraordinary jurisdiction under Articles 226/227 of the Constitution can always be invoked and exercised by this court in dispensing justice to the parties.**"**

Mr. T.S.Chauhan, learned counsel appearing on behalf of respondents No.1 to 4 had relied upon the case ***Bijoy Kumar Dugar Versus Bidya Dhar Dutta and others,*** 2006 (3) SCC 242 where their Lordships have held as under:

> "It is not in dispute that the right of appeal is a statutory right to the parties and where the law provides a remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the Award given by the MACT. Under Section 173 of the Act, an insurer has a right to file an appeal before the High Court on limited grounds available under Section 149(2). The appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act. However, in a situation where there is collusion between the claimant and the insurer or the insured does not contest the claim and further, if the MACT does not implead the Insurance Company to contest the claim, in such a situation it is open to the insurer to seek permission of the MACT to contest the claim on the ground available to the insured or to a person against whom the claim has been made. If permission is granted and the insurer is allowed to

contest the claim on merit, in that case it is open to the insurer to file an appeal against the Award of the MACT on merits. Thus, in such a situation, the insurer can question the quantum of compensation awarded by the MACT. As noticed earlier in the present case, the insurer made a challenge to the Award of the MACT before the High Court in the writ petition on the ground of its liability to pay the interest on the amount of compensation for a specified period without obtaining the permission of the MACT as contemplated under the statute. Thus, in the light of the decision of this Court in Sadhana Lodh v. National Insurance Co. Ltd. & Another [2003] 3 SCC 524, dealing with the provisions of Ss. 173 and 149(2) of the Act and the provisions of Articles 226 and 227 of the Constitution and also Section 115 of the Code of Civil Procedure, 1908, this Court held that since the insurer has a remedy by filing an appeal before the High Court on the available defences envisaged under the statute, writ petition under Article 226/227 of the Constitution by an insurer challenging the Award of the MACT is not maintainable.

In our view, the above judgment clinches the issue that the writ petition filed by the Insurance Company was not maintainable against the order of the MACT awarding interest at the rate of 10% per annum on the amount of compensation from the date of the institution of the claim petition till the date of payment. The impugned order, accordingly, is set aside. This appeal is allowed. Consequently, the writ petition is dismissed. The award of the MACT granting compensation to the claimants along with interest is fully justified and it is accordingly maintained. The parties are left to bear their own costs."

The Full Bench of this Court has held that the award can be challenged by the Insurance Company if the award on the face of it is perverse or based on fraud.

In view of the above discussion, there is no perversity in the award dated 4.1.2005 passed by the MACT-I (Fast Track Court). The MACT had correctly assessed the income of the deceased Amar Singh. The award

has been passed after taking into consideration the age of claimants. There is neither any jurisdictional error nor any procedural irregularity in the award passed by the MACT (Fast Track Court).

Consequently there is no merit in the writ petition and the same is dismissed with no order as to costs.

June 29, 2007 (g) **(Rajiv Sharma), J.**